

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

**In the Matter of the Petition for)
Reinstatement of Revoked)
Certificate of:)**

BYRON FLORES, M.D.)

Case No. 8002014006764

**Physician's and Surgeon's)
Certificate No. A 52173)**

Petitioner)

DECISION

The attached Proposed Decision is hereby amended, pursuant to Government Code section 11517(c)(2)(c) to correct technical or minor changes that do not affect the factual or legal basis of the proposed decision. The proposed decision is amended as follows:

1. Page 1, caption – Petitioners name will be corrected to read “Byron Flores”
2. Page 1, paragraph 1 –February 16, 1988 will be corrected to read “July 30, 1993”
3. Pages 1 and 5, Physician’s and Surgeon’s Certificate No. will be corrected to read “A52173”
4. Page 19, Order - Petitioners name will be corrected to read “Byron Flores”
5. Page 19, Order - Physician’s and Surgeon’s Certificate No. will be corrected to read “A52173”

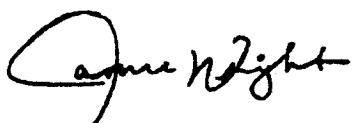
The attached Proposed Decision is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on August 28, 2015.

IT IS SO ORDERED July 31, 2015.

MEDICAL BOARD OF CALIFORNIA

By: _____


Jamie Wright, J.D., Chairperson
Panel A

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition for Reinstatement
of Revoked Certificate of:

BYRON FLORES SOLORZANO,

Petitioner,

Case No. 800-2014-006764

OAH No. 2015040268

PROPOSED DECISION

Administrative Law Judge Ralph B. Dash, Office of Administrative Hearings, State of California, heard this matter on July 1, 2015, in Los Angeles, California.

Deputy Attorney General Cindy M. Lopez represented the Office of the Attorney General.

Attorney at Law Albert J. Garcia represented Byron Flores Solorzano (Petitioner), who was present throughout the proceedings.

Oral and documentary evidence having been received and the matter having been submitted, the Administrative Law Judge makes the following Proposed Decision.

FINDINGS OF FACT

1. On February 16, 1988, the Medical Board of California (Board) issued Physician's and Surgeon's Certificate number A 51273 to Petitioner.
2. By its Decision rendered on April 2, 2008, which became effective on May 2, 2008, in case number 06-2002-141626, the Board revoked Petitioner's certificate. According to Petitioner's certified license history (Exhibit 2), after the Board denied Petitioner's "Petition for Reconsideration and Request to Stay," Petitioner filed a Petition for Writ of Mandate in the Superior Court which the court denied, ruling in favor of the Board on April 29, 2010.
3. At the hearing of this matter, Petitioner's counsel contended that at the underlying hearing, in which the Board adopted the Proposed Decision of Administrative

Law Judge Stuart Waxman, Respondent admitted his criminal convictions, his improper record keeping, and “one other cause of action.” This was done to save the time and expense of a hearing. But counsel’s statement was only partially correct. While Respondent admitted a number of charging allegations, he contested the others. With respect to these other allegations, which were fully litigated during the five-day trial, the Board found Petitioner had committed simple and extreme departures from the standard of care in many instances. Following is a lengthy quote from the Board’s Decision which gives Petitioner’s background, his stipulations, and his failures to follow the standard of care as well as those times he did follow the standard of care:

Respondent’s Background

3. Respondent received his medical training at San Carlos University in Guatemala City, Guatemala, from which he graduated in 1983. Before emigrating to the United States, he received post-graduate training in internal medicine at Social Security Guatemalan Institute General Hospital in Guatemala City, Guatemala. From 1992-1995, he served an internship and residency in internal medicine at Los Angeles County/University of Southern California Medical Center in Los Angeles.

4. Respondent was previously board certified in internal medicine. He was not permitted to renew his certification during the pendency of the instant disciplinary action. He presently has hospital privileges at City of Angels Medical Center in Los Angeles.

5. In 2002, Respondent’s patient population was approximately 80 to 85 percent Latino and 15 to 20 percent African American. His adult-child patient ratio was approximately 50/50. Most were low to middle income patients, and a great many of them were Medi-Cal recipients. Presently, the cultural mix of Respondent’s patients is approximately the same as it was in 2002, but most of his current patients are adults.

6. Respondent has no prior history of license discipline.

Stipulations to Violations of the Medical Practice Act

7. Respondent admitted the truth of each and every charge and allegation in paragraphs 40, 41, 42, 42(A), 42(C) (first sentence only), 45(A), 47(A), 49(A), 51(A), 54, 55, 56(A), 56(B) (first sentence only), and 57 of the Third Amended Accusation. Based on those admissions, Respondent also admitted that his actions, as described in the above paragraphs of the Third Amended Accusation, constitute violations of Business and Professions Code section 2234, subdivision (b) (gross negligence), and 2236 (conviction of a crime substantially related to the qualifications, functions, or duties of a

physician and surgeon). Those paragraphs are set forth verbatim below and are incorporated as factual findings herein.

[FOURTH CAUSE FOR DISCIPLINE

(Conviction of a Crime)]

40. Respondent is subject to disciplinary action under section 2236, subdivision (a), of the Business and Professions Code for his conviction of a crime which is substantially related to the qualifications, functions or duties of his profession. The circumstances are as follows:

41. On or about July 14, 2005, in a criminal proceeding entitled *People of State of California v. Byron Flores* in Los Angeles County Superior Court, Case Number BA286794, Respondent was charged in a Criminal Complaint with five felony counts of violating Business and Professions Code section 2052, subdivision (b), conspiring, aiding or abetting the unlicensed practice of medicine.

42. On or about July 26, 2006, the court entered judgment following Respondent's plea of nolo contendere to four misdemeanor charges of violating Business and Professions Code section 2052, subdivision (b)^{1,2}. The circumstances are as detailed in paragraph 43 to 51 below and as follows:

¹ Subdivision (b) of Business and Professions Code section 2052 provides that: "Any person who conspires with or aids or abets another to commit any act described in subdivision [(a)] is guilty of a public offense, subject to the punishment described in that subdivision."

² Subdivision (a) of Business and Professions Code section 2052 states: "(a) Any person who practices or attempts to practice, or who advertises or holds himself or herself out as practicing, any system or mode of treating the sick or afflicted in this state, or who diagnoses, treats, operates for, or prescribes for any ailment, blemish, deformity, disease, disfigurement, disorder, injury, or other physical or mental condition of any person, without having at the time of so doing a valid, unrevoked, or unsuspended certificate as provided in this chapter or without being authorized to perform the act pursuant to a certificate obtained in accordance with some other provision of law is guilty of a public offense, punishable by a fine not exceeding ten thousand dollars (\$10,000), by imprisonment in the state prison, by imprisonment in a county jail not exceeding one year, or by both the fine and either imprisonment."

A. Byron Flores, M.D. operated and owned a medical office located at 8301 South Vermont Avenue, Los Angeles, California known as the Clinica Medica Salvador Del Mundo. There he employed Cesar Barrillas who, at all times relevant to the Causes for Discipline alleged herein, did not possess a physician and surgeon's certificate, a license as a registered nurse, or any other professional health care license issued by the State of California. These facts were known to Dr. Flores.

[¶] . . . [¶]

C. Barrillas represented himself as "Dr. Flores" to the parents of pediatric patients Mayenci R., Jose M., Francisco V. and Evelyn M. . . .

[Respondent was placed on summary probation for a period of 36 months under various terms and conditions including performance of 100 days of community service, payment of fines and assessments totaling \$220, and payment of a restitution fine of \$12,784.]

[¶] . . . [¶]

FIFTH CAUSE FOR DISCIPLINE

(Gross Negligence: Patients Mayenci R., Jose M., Francisco V., and Evelyn M.)]

45. Dr. Flores was grossly negligent in his care of Mayenci R. as follows:

A. The examinations of December 28, 2005 and March 3, 2005 should have been performed by a licensed medical professional. To the extent that these examinations were not conducted by a licensed medical professional, this would constitute an extreme departure [from the standard] of care.

[¶] . . . [¶]

47. Dr. Flores was grossly negligent in his care of Jose M. as follows:

A. The examinations of January 4, 2005, February 18, 2005, March 8, 2005 and August 18, 2005 should have been performed by a licensed medical professional. To the extent that these examinations

were not conducted by a licensed medical professional, this would constitute an extreme departure [from the standard] of care.

[¶] . . . [¶]

49. Dr. Flores was grossly negligent in his care of Francisco V. as follows:

A. The examinations of May 4, 2004, March 17, 2005, March 29, 2005, and May 4, 2005 should have been performed by a licensed medical professional. To the extent that these examinations were not conducted by a licensed medical professional, this would constitute an extreme departure [from the standard] of care.

[¶] . . . [¶]

51. Dr. Flores was grossly negligent in his care of Evelyn M. as follows:

A. The examinations of February 2, 2004, February 25, 2005 and March 29, 2005 should have been performed by a licensed medical professional. To the extent that these examinations were not conducted by a licensed medical professional, this would constitute an extreme departure [from the standard] of care.

[¶] . . . [¶]

[EIGHTH CAUSE FOR DISCIPLINE]

(Conviction of a Crime)]

[¶] . . . [¶]

54. Respondent is subject to disciplinary action under section 2236, subdivision (a), of the Business and Professions Code for his conviction of a crime which is substantially related to the qualifications, functions, or duties of his profession. The circumstances are as follows:

55. On or about October 15, 2007, in a criminal proceeding entitled *People of State of California v. Byron Flores* in Los Angeles County Superior Court, Case Number BA327244, Respondent, along with co-defendant Maria Teresa Pandura (Respondent's medical biller), were [*sic*] charged in a Felony Criminal Complaint with eleven counts of violating Welfare and Institutions Code section 14107, subdivision

(b)(1), (presenting false Medi-Cal claims) and one count of violating Penal Code section 487, subdivision (a), grand theft.

56. On or about November 30, 2007, the court entered judgment following Respondent's plea of guilty to Count 1 of the Criminal Complaint, one felony charge of violating Welfare and Institutions Code section 14107, subdivision (b)(1), Presenting False Medi-Cal Claims.³ [4]. The circumstances are as follows:

A. Respondent operated and owned of [sic] Salvador Del Mundo Medical Clinic (SDMMC) and employed Maria Teresa Pandura (Pandura) as his medical biller.

B. An analysis of Medi-Cal billings paid to SDMMC from January 1, 2004 to May 31, 2005, revealed payments to SDMMC for services rendered under the Child Health and Disability Prevention (CHDP) in excess of \$115,000.

[¶] ... [¶]

57. Respondent was sentenced to five (5) years formal probation, subject to various conditions including paying the total sum of \$265,000 (\$115,000 in restitution to the Health Care Deposit Fund (Medi-Cal) and \$150,000 for investigative costs to the California Department of Justice); and performing 250 hours of community service in his capacity as an M.D.

8. With respect to Paragraph 37(B) of the Third Amended Accusation, Respondent admitted that his administration of Decadron to Patient Maria J. was not medically indicated and constituted a simple departure from the standard of care.

³ (a) Any person, including any applicant or provider as defined in Section 14043.1 [. . .] who engages in any of the activities, identified in subdivision (b) is punishable by imprisonment as set forth in subdivisions (c), (d), and (e), by a fine not exceeding three times the amount of the fraud or improper reimbursement or value of the scheme or artifice, or by both this fine and imprisonment.

(b) The following activities are subject to subdivision (a): (1) A person, with intent to defraud, presents for allowance or payment any false or fraudulent claim for furnishing services or merchandise under this chapter or Chapter 8 (commencing with Section 14200).

⁴ The above footnote is numbered footnote 6 in the Third Amended Accusation.

9. Except for eight pages in the collective records of four pediatric patients, marked and admitted as Exhibits 7, 8, 9 and 10, Barrillas saw the patients in each of the visits documented in those records, even though Respondent's initials were placed on the records. Therefore, those records are inaccurate and constitute violations of Business and Professions Code section 2266.

Dishonest and Corrupt Acts

10. Both of Respondent's criminal convictions arose out of Respondent's permitting Barrillas, a physician licensed in Guatemala, but holding no professional licenses in California, to perform physical examinations on pediatric patients in connection with CHDP. The Medi-Cal rules governing that program required that physical examinations be performed only by licensed physicians or certain other health care professionals licensed in this state. Barrillas initially began performing the physical examinations while Respondent was on vacation. However, upon his return, Respondent acquiesced to the practice. Barrillas affixed Respondent's name or initials to the patients' charts to indicate that it was Respondent, rather than Barrillas, who performed the examinations, and Barrillas held himself out to the patients and their parents as a physician licensed to practice in the State of California. Respondent condoned that practice. Shortly after Barrillas began performing physical examinations on Respondent's pediatric patients, Respondent used his signature stamp to pre-sign prescriptions for Barrillas to use to prescribe medications for those patients.

11. The fact that, on numerous occasions, Respondent permitted an individual whom he knew was not a licensed health care professional to perform physical examinations on his pediatric patients; the fact that Respondent knew that only certain licensed health care professionals could perform physical examinations on his pediatric patients; the fact that Respondent hid the fact that Barrillas was not licensed in the State of California from the parents of his pediatric patients; the fact that Respondent permitted Barrillas to use Respondent's name on the charts to mislead the reader into believing Respondent had seen the patients; the fact that Respondent pre-signed prescription forms for Barrillas to prescribe medications to pediatric patients; and the fact that Respondent was convicted of violating Business and Professions Code section 2052, subdivision (b) and Welfare and Institutions Code section 14107, subdivision (a)(1),⁵ crimes

⁵ "A voluntary plea of guilty is the equivalent of a conviction of the crime (*People v. Jones*, 52 Cal.2d 636, 651 [343 P.2d 577]); all allegations of the offense are admitted by a defendant when he enters his plea. (*People v. Rhodes*, 137 Cal.App. 385, 387 [30 P.2d 1026].) A plea of guilty in a criminal

involving moral turpitude, constitute, individually and collectively, corrupt and dishonest acts.

The Standard of Care Issues

12. The standard of care issues in this case involve four female patients, all of whom suffered from diabetes.⁶ Respondent administered numerous injections of Decadron and Lincomycin to those four patients.

13. Decadron is a gluco-corticoid (a type of steroid) that has an anti-inflammatory effect when given in large doses. However, given in large doses, it also has the effect of raising the patient's blood glucose level, at least temporarily. It can also exacerbate infections in diabetics. Therefore, Decadron is generally contraindicated for a diabetic patient. In 2002, numerous other anti-inflammatory medications which did not affect blood glucose levels were readily available.

14. Complainant offered the expert witness opinions of Jeffrey I. Barke, M.D.⁷ and David L. Geffner, M.D. Respondent's expert was Kamyar Kalantar-Zadah, M.D. All of the experts were well qualified and were, for the most part, credible. At times, both Dr. Geffner and Dr. Kalantar-Zadah tended to "advocate" more than one would expect from an expert witness. However, overall their testimony was competent and well-received. The findings regarding the standard of care in the paragraphs that follow are based on the medical records, the weight and credibility of the experts' opinions, and Respondent's testimony.

prosecution is 'a conclusive admission of [his] guilt and of every element entering into the offense charged' (*People v. Whitton*, 112 Cal.App.2d 328, 333 [246 P.2d 60]) and 'constitutes no less than a confession of every factor comprising the charge contained in the pleading.' (*People v. Ward*, 118 Cal.App.2d 604, 608 [258 P.2d 86].) According to *Berg v. United States* (9th Cir. 1949) 176 F.2d 122, a plea of guilty means guilty 'as charged' in the information, and by it 'all averments of fact are admitted. . . . The effect is the same as if the defendant had been tried before a jury and had been found guilty upon evidence covering all material facts.'" (*Arenstein v. California State Bd. of Pharmacy* (1968) 265 Cal.App.2d 179, 190.)

⁶ One of the patients may have had only a pre-diabetic condition.

⁷ Dr. Barke did not testify at the hearing other than to provide his background and qualifications. The parties stipulated that his report (Complainant's Exhibit 34B) would be received in evidence. Respondent's expert would be permitted to comment on the report and, if she deemed it necessary, Complainant could then call Dr. Barke to testify in rebuttal.

15. Drs. Barke and Geffner opined that the extensive administration of Decadron to diabetic patients, frequently when their blood glucose levels were already elevated, constituted an extreme departure from the standard of care. Dr. Kalantar-Zadah, M.D. did not believe the use of Decadron on the four patients constituted a deviation from the standard of care. Even though in some cases, the medical indication for Decadron was not “quite clear” to Dr. Kalantar-Zadah, he nonetheless considered it “a” choice for the treatment of inflammation. He claimed that Respondent’s patient population might not be compliant if given oral anti-inflammatories, but offered no basis for that opinion and no example of non-compliance. He approved of Respondent’s use of Decadron for pain relief because, given the social and cultural background of Respondent’s patient population, narcotics may not have been the “best choice.” When confronted with the fact that Respondent had prescribed Tylenol #3 to a patient, Dr. Kalantar-Zadah testified that Tylenol #3 was one of the mildest narcotics, and that a patient might not know that it has a narcotic component. That testimony was not credible. It is just as likely that a patient might not be aware of a narcotic component in any other narcotic medication. Dr. Kalantar-Zadah conceded that the choice of Decadron was on the “fringe” of the “mainstream.” Given the high risk of elevated blood glucose levels caused by the administration of Decadron to diabetic patients and the availability of alternative anti-inflammatory medications that did not have that side effect, Respondent’s numerous administrations of Decadron to diabetic patients is found to be an extreme departure from the standard of care.

16. Lincomycin is an antibiotic which has severe side effects such as colitis and an inability to create cells in the bone marrow. Both conditions can cause death. Because of the availability of newer antibiotics with fewer and less severe side effects, the use of Lincomycin as a first line treatment for infection fell out of favor with the general medical community several years ago, and was already out of favor at all times relevant to this matter, its use being reserved for patients suffering from infections that were resistant to other antibiotic medications.

17. Respondent administered Lincomycin numerous times to two of the four patients referenced below without administering any tests to determine whether an infection actually existed and, if so, the type of infection or even whether the infection was viral or bacterial. For the above reasons, the opinions of Complainant’s experts that the frequent administrations of Lincomycin constituted an extreme departure from the standard of care was more convincing than that of Respondent’s expert who found no such departure. Respondent’s administration of Lincomycin to two of the four patients constituted an extreme departure from the standard of care.

18. Respondent's medical record keeping was also sub-standard. The charting was extremely brief and lacking in detail and, in a great many instances, was completely illegible. The brevity, lack of detail and illegibility of Respondent's medical records constitute a simple departure from the standard of care and a failure to maintain adequate and accurate records.

Patient Rosa A.

19. Patient Rosa A. was a 56-year-old female who suffered from heart disease, asthma, hypertension, high cholesterol, joint disease and diabetes. Over the course of approximately 20 office visits, Respondent administered numerous intra-muscular injections of Decadron, generally in high doses of 2 mg.

20. On January 30, 2002, Rosa A. presented with a complaint of dizziness. She had a blood glucose level of 350. Respondent administered an injection of Vitamin B complex without documenting a medical indication for it. He did not document any treatment plan for the highly elevated blood glucose level. Respondent testified that Vitamin B complex is frequently given for vertigo, but that claim was not corroborated even by his own expert. The administration of Vitamin B complex without medical indication, and the failure to indicate a treatment plan for the elevated blood glucose level, each constitutes a simple departure from the standard of care.

21. On May 15, 2002, Respondent administered Vistaril, an antihistamine, to Rosa A. after he found her lungs to be clear to auscultation bilaterally. No medical indication was given for that treatment, and the treatment was not shown to be justified by Respondent or his expert at the administrative hearing. Respondent and his expert indicated that the Vistaril was used as an anxiolytic for this post-menopausal patient who suffered from back pain. However, the record contains no indication that the patient was anxious. At the hearing, Respondent's justification for his use of Vistaril on May 15, 2002, was that he "assumed" the patient had "some component of anxiety." Respondent's administration of Vistaril without medical indication constitutes an extreme departure from the standard of care.

22. On October 16, 2002, Rosa A. presented with a complaint of rectal pain. A urinalysis showed a glucose level of over 1,000 mg/dl, an extremely high reading. Respondent failed to establish a treatment plan for the patient's very high glucose level. His failure to do so constitutes an extreme departure from the standard of care.

23. On November 10, 2000,⁸ Rosa A. presented with “flu-like symptoms.” Respondent’s diagnoses included bronchitis and dyspnea (shortness of breath) for which he administered Rocephin, an antibiotic, and Decadron. Complainant did not prove, by clear and convincing evidence, that the administration of Rocephin fell below the standard of care.

Patient Margarita B.

24. Margarita B. was a 65-year-old female patient who suffered from diabetes, hypertension, hyperlipidemia, mild renal failure, anemia, hyperthyroidism, degenerative joint disease, obesity and reflux. She treated with Respondent between January 4, 2002, and October 15, 2002.

25. On January 4, 2002, Margarita B. presented with a chief complaint of left-sided stomach pain. The patient refused a vaginal examination, and Respondent documented that refusal on his progress note. Based on his knowledge and experience, Respondent diagnosed vaginitis. Complainant failed to prove, by clear and convincing evidence, that Respondent’s failure to document a vaginal examination to justify that diagnosis represents a deviation from the standard of care.

26. During the same visit, the patient’s glucose level was 387. She was taking Avandia for diabetes. Respondent indicated on the chart that the patient’s fasting blood glucose level should be re-checked in 24-48 hours, and that the patient was to return in three to four weeks “if glucose OK.” Complainant did not prove, by clear and convincing evidence, that Respondent failed to document a follow-up plan to address the patient’s high glucose reading.

27. On February 21, 2002, the patient presented with multiple gastrointestinal symptoms without bleeding. Laboratory tests revealed a glucose level of 769 (with 70-105 being the normal range) and elevated kidney function tests. Respondent reviewed the laboratory results on February 27, 2002, and discussed them with the patient the next day. He did not know the date he received the results. He increased the dosage of Avandia from once per day to twice per day for one week and instructed the patient to return in two weeks. He also told her to obtain a glucometer. Dr. Geffner opined that increasing the Avandia dosage was insufficient because the medication is not fast-acting. However, the propriety of the treatment is not criticized in the Third Amended Accusation. The allegation concerns Respondent’s failure to document a plan to address the high glucose level. Respondent adequately did so and, in so doing, met the standard of care in that regard.

⁸ The date may be 2002 rather than 2000. The chart entry is difficult to read.

28. Dr. Geffner testified that the creatinine level was only slightly elevated, but the BUN (blood urea nitrogen) was “very high.” A low hematocrit was indicative of severe anemia and possibly peptic ulcer disease or internal bleeding. He further indicated that severe dehydration could have made the kidney function tests look more ominous than they were, and that Respondent should have ordered repeat tests. Dr. Barke opined that it would have been “appropriate” to obtain a consultation with a nephrologist or endocrinologist. Dr. Kalantar-Zadah, a nephrologist, testified that the creatinine was a more reliable test for kidney disease than the BUN. He would recommend a consultation with a nephrologist after two or three similar tests, but not as a result of the single test. Complainant failed to prove, by clear and convincing evidence, that Respondent deviated from the standard of care by failing to refer the patient to a nephrologist or endocrinologist.

29. However, Respondent failed to document a follow-up plan for the patient’s abnormal kidney tests. That failure constitutes a simple departure from the standard of care.

30. Between March 25, 2002, and March 28, 2002, Respondent treated Margarita B. for what he believed was acute bronchitis. He ordered x-rays which came back under-exposed, but he saw no frank signs of pneumonia on them. He then sent the films to a radiologist whose impression was “borderline cardiomegaly and pulmonary venous hypertension.” The radiologist recommended repeating the x-rays. Respondent did not believe the patient had an enlarged heart and, based on the clinical findings, continued to treat the patient for bronchitis by administering Ampicillin. He also believed the patient’s high glucose reading over the four-day period was “probably” due to the infection, and he therefore treated the elevated glucose “indirectly” by attacking the infection with Ampicillin. Respondent did nothing further to rule out cardiomegaly or pulmonary venous hypertension or the possibility of co-morbidity of one or both of those conditions with bronchitis. The patient was already taking Hyzaar for a cardiac condition, and Respondent continued her on that medication. Respondent’s failure to address the x-ray findings of borderline cardiomegaly and pulmonary venous hypertension, and his failure to address the elevated glucose level in light of strong evidence that the patient did not have bronchitis, constituted extreme departures from the standard of care.

31. On April 18, 2002, the patient presented with a cough, sore throat and fever. Her glucose level was 211. Respondent diagnosed the patient as suffering from a sinus infection and treated her with Lincomycin and Avelox, another antibiotic. He did not establish a follow-up plan for the elevated glucose level because he believed it was due to the infection. Respondent’s failure to document a plan to rule out other causes of the elevated glucose

level, and his failure to document the justification of the two antibiotics, each constitutes a simple departure from the standard of care.

32. On July 5, 2002, Respondent treated Margarita B. with intra-muscular injections of Decadron, Vistaril and Vitamin B complex without documentation of an adequate physical examination. His administration of those drugs without medical indication constituted an extreme departure from the standard of care. His failure to document was a simple departure from the standard of care.

Patient Maria C.

33. Maria C. was a 49-year-old female patient who suffered from diabetes, hypertension, obesity, chronic anxiety and depression, and asthma. She saw Respondent between January 10, 2002, and October 10, 2002.

34. On February 11, 2002, Maria C. presented complaining of right foot pain over two days. Respondent removed one of the patient's toe nails, gave her an intra-muscular injection of Lincomycin, and prescribed Keflex, another antibiotic. Respondent wrote an extremely abbreviated operative note in the corner of a progress note indicating that the procedure had been performed in sterile fashion under local anesthetic. There is no indication in Maria C.'s chart that informed consent for the procedure, either oral or written, was obtained. Respondent testified he obtained oral consent but did not document it. Without some corroboration, that explanation was given no weight because it was belied by the other evidence. Respondent's failure to obtain informed consent for the toe nail removal procedure, and his failure to document a detailed procedure note, each constituted an extreme departure from the standard of care.

35. In addition, there is no justification in the patient's chart for the injection of Lincomycin. An injectable antibiotic is indicated for treatment of severe infection. Nothing in the chart indicated that the patient was suffering from an infection on February 11, 2002. Respondent testified that he frequently gave his patients injections because Medi-Cal limited the number of prescribed oral medications a patient could receive but did not limit the number of injections. However, because injectable antibiotics were generally given for severe infection, justification for their use in the absence of infection was required to comply with the standard of care. Respondent's failure to provide justification for administering the injectable antibiotic constitutes a simple departure from the standard of care.

36. Maria C.'s medical records indicate that, between April 12 or 17, 2002 (the date is illegible), and June 18, 2002, and on another date which is illegible on the chart, Respondent administered injectable Decadron four

times, Rocephin twice, and Lincomycin, Vistaril and Ancef once each. Although, at the administrative hearing, Respondent offered his justifications for each of those injections, the justifications are not written in the chart. His failure to document the basis for administering each medication constitutes a simple departure from the standard of care.

37. On May 21, 2002, the patient presented with a chief complaint of vaginal itching. She refused a pelvic exam and declined a referral to a gynecologist. Respondent did not take a detailed history to rule out the numerous other causes of vaginal itching. He diagnosed vaginitis based on the patient's history of diabetes. (Respondent testified that female diabetics contract vaginitis "more than 90 percent of the time.") He treated the condition with Terazol cream, a medication effective in the treatment of yeast infections. Respondent's failure to take a detailed history to rule out other causes for the vaginal itching after he was precluded from performing a pelvic examination constitutes an extreme departure from the standard of care.

38. On April 8, 2002, Maria C. presented with a three-day history of flu-like symptoms, shortness of breath, chest pain and dizziness. Her glucose level was 228. Respondent diagnosed bronchitis which he treated with injectable Vistaril and Rocephin, and a prescription for Keflex. He did nothing to address the elevated glucose other than to treat the infection which he believed would lower the glucose level. Respondent failed to document the justification for the injectable medications, and he failed to document his plan to control the glucose level. Those omissions constitute a simple departure from the standard of care.

Patient Maria J.

39. Maria J. was a 67-year-old female patient suffering from pre-diabetes or diabetes, obesity, hypertension, hyperlipidemia, peptic ulcer disease, chronic sinusitis, anxiety, depression and degenerative joint disease. She treated with Respondent between January 8, 2002, and January 23, 2003.

40. Respondent conceded that inadequate physical examinations were given on January 8, 2002, and May 21, 2002. The administration of Decadron and Vitamin B complex at those visits, in light of inadequate physical examinations and in the absence of a plan to follow up on an elevated glucose level of 120, constitute an extreme departure from the standard of care.

41. Complainant alleged Respondent deviated from the standard of care in connection with the removal of one of Maria J.'s toe nails on June 22, 2002. Respondent did not remove the toe nail. That procedure was performed by a podiatrist. Complainant did not prove, by clear and convincing evidence,

any deviations from the standard of care in connections with Maria J.'s office visit of June 22, 2002.

Evidence of Mitigation

42. Respondent accepts full responsibility for permitting Barrillas to continue to examine and treat patients after Respondent learned of the practice, and for knowingly submitting Barrillas's billings to Medi-Cal as his own. Respondent cooperated with the authorities and entered his pleas early in both criminal proceedings. After his 2005 arrest for aiding and abetting the unlicensed practice of medicine, Respondent fired Barrillas.

43. Respondent expressed great remorse for permitting Barrillas, who was unlicensed, to examine his pediatric patients, and for allowing the children's parents to be misled as to Barrillas's qualifications. Respondent admitted he wronged both his pediatric patients and their parents.

44. Without attempting to diminish the seriousness of his Medi-Cal fraud conviction, in his closing argument, Respondent argued that a distinction should be drawn between Respondent's permitting Barrillas to perform medical treatment on patients, and the "typical" Medi-Cal fraud case involving services that were not medically necessary or which were billed for but never performed. He argued that what he permitted to occur is "not as egregious" as the "typical" Medi-Cal fraud case.

45. That argument was not persuasive. It has been held that disparate types of dishonesty are not to be compartmentalized. (*Windham v. Board of Medical Quality Assurance* (1980) 104 Cal.App.3d 461, 470.) Similarly, there is little point in distinguishing degrees of egregiousness. However, if one were to follow Respondent's argument on this issue, the path would lead to the conclusion that Respondent's conduct was far more egregious than the "typical" Medi-Cal fraud case involving unnecessary treatment or billings made for treatment never rendered. In this case, Respondent permitted children to be examined, treated and prescribed for by an individual who was not a licensed health care professional in this state. He permitted that individual to place his hands on unsuspecting children while misleading the children and their parents into believing that the children were being touched and cared for by a physician who was licensed to do so by the Medical Board of California. Thus, Respondent was not only blatantly fraudulent with respect to his Medi-Cal billings, he was blatantly fraudulent to his pediatric patients and to their parents as well.

46. In July 2007, Respondent took and completed the Medical Record Keeping Course offered by the University of California, San Diego School of

Medicine Continuing Medical Education. He took the course because he recognized his shortcomings in that area.

47. Respondent has also entered into a lease with Balboa Capital to obtain an electronic medical record keeping system for his office. He and his office personnel are currently being trained in the use of that equipment.

48. Respondent discontinued administering Decadron and Lincomycin to his patients after the Board expressed concern over those practices. However, he continues to believe in his justifications for using the two drugs. He believes the benefits outweighed the risks, and he would continue to use Decadron and Lincomycin today were it not for the Board's concerns.

4. Petitioner put on substantial evidence that he has rehabilitated himself from his past conduct. He has completed the Ethics and Professional Boundaries Course at the University of California, Irvine, including a 12-month follow-up component to the program. As part of the program, Petitioner developed a Stratified Boundary and Ethics Protection Plan (Exhibit E) to guide him in his future practice, and to help identify and avoid potential personal and professional pitfalls. One of the important things that Petitioner learned at the Ethics and Professional Boundaries Course is how to avoid a high-risk medical practice. He learned how to recognize the warning signs, or "red flags," that can ultimately lead to problems. Petitioner is ready to apply that knowledge in his future practice if he is reinstated.

5. Petitioner has also completed more than 1,500 Continuing Medical Education (CME) credits (Exhibit B). Petitioner completed the PACE Medical Record Keeping Course prior to the hearing on the Accusation. He also performed 1050 hours of community service at the Gay and Lesbian Center, in Hollywood, California. The first 400 hours of that community service was court-ordered. Petitioner saw how much the Center helped its constituents so he continued to volunteer his time there. In addition to the mundane, such as handling specimens for evaluation of sexually transmitted diseases, he also worked as a translator, being fluent in four languages: French, Italian, English and Spanish. He is desirous of working with Doctors Without Borders, if his license is reinstated.

6. Petitioner has spent the past five years working as a part-time office administrator in Los Angeles for Hy Ngo, MD, who is Board certified in internal medicine. Petitioner also serves as an interpreter for Dr. Ngo's Spanish-speaking patients, but he has no other patient contact. Dr. Ngo testified on Petitioner's behalf. He has known Petitioner for 14 years, having met him during their Residency Program. Petitioner would "cover" for Dr. Ngo on weekends. Dr. Ngo admitted he was "shocked" when he read the Board's Decision but he nevertheless believes Petitioner "is trustworthy, kind and honest." He also believes Petitioner has "good medical knowledge" even though Petitioner has been out of practice for several years. Dr. Ngo conducts a weekly didactic for his Physician's Assistants and Petitioner participates in those sessions. Dr. Ngo wrote a letter on Petitioner's behalf (part of

Exhibit 2) noting that Petitioner was studying with him for Dr. Ngo's Board re-certification, then wrote, in part:

I continued to stay friends with Byron and had not given up on him because I truly feel he has learned from his mistakes. I do not look at Byron for what he was, but rather, what he has become. He has accepted full responsibility for his actions, and I have seen the changes and progress he has made over these past few years. We are all humans and we have all make mistakes at some point in our lives. It was through these and bad judgments that have allowed Byron to learn and grow as a professional person. I sincerely feel that he is a better person because of this and if given the opportunity to practice medicine again I know he will uphold the highest standards of care and ethical behavior.

7. Petitioner earns additional funds to support his family (a wife and three adult children) who live together by doing real estate investments. The family attends church on a regular basis. He has not, however, had sufficient funds to pay all of his court-ordered restitution. If reinstated, Petitioner plans only to work in a group practice "largely because of what I have learned at the Ethics and Professional Boundaries course about avoiding high-risk medical practices." He would also seek employment at the Gay and Lesbian Center so he could directly provide health care to the gay and lesbian community.

8. Petitioner was highly respectful of the Board and these proceedings. He closed his narrative statement on a poignant and simple but eloquent note. He wrote:

For many years I enjoyed a fulfilling career caring for my patients. The past few years have left a void in my life. These same years, however, have given me the time and opportunity to reflect on my life, and on what is truly important to me. My life's calling is the practice of medicine. I sincerely want to contribute to society by practicing once again. I still have much to offer, and I hope the Board will give me the opportunity to resume my life's work. I have learned my lessons. If I am permitted to resume the practice of medicine, I will uphold the highest principles of ethical behavior and standards of quality professional care. I assure the Board that there will be no recurring professional transgressions from me in the future.

9. Because Petitioner has been out of practice for seven years, there is no way the Board could ensure the public health, safety and welfare, if it allowed him to practice medicine without first determining his current ability to do so. In this regard, it is noted that while Petitioner addressed all of his ethical lapses, he did not address any of the medical lapses the Board so painstakingly addressed in its Decision. For instance, as set forth in Finding 15 of the Decision, the Board noted, "Respondent's numerous administrations of Decadron to diabetic patients is found to be an extreme departure from the standard of care." Similarly, in Finding 17, the Board found that "Respondent's administration of Lincomycin to two of the four patients constituted an extreme departure from the standard of care." The Board also had concerns about Respondent's administration of Vitamin B complex and Vistaril "without medical indication" (Findings 20 and 21) and his failure to deal with

“borderline cardiomegaly and pulmonary venous hypertension (Finding 30). Petitioner did not address these concerns at the hearing on this Petition.

LEGAL CONCLUSIONS

1. The burden rests on a Petitioner to prove that he has rehabilitated himself and that he is entitled to have his license restored. (*Flanzer v. Board of Dental Examiners* (1990) 220 Cal.App.3d 1392, 1398.)

2. A person seeking reinstatement must present strong proof of rehabilitation and the showing of rehabilitation must be sufficient to overcome the Board’s former adverse determination. The standard of proof is clear and convincing evidence. (*Housman v. Board of Medical Examiners* (1948) 84 Cal.App.2d, 308, 315-316.)

3. Rehabilitation is a state of mind and the law looks with favor upon rewarding with the opportunity to serve, one who has achieved reformation and regeneration. (*Hightower v. State Bar* (1983) 34 Cal.3d 150, 157.)

4. Cases authorizing reinstatement to a professional practice commonly involve a substantial period of exemplary conduct following the misdeeds. The more serious the misconduct, the stronger the showing of rehabilitation must be. (*In re Gossage* (2000) 23 Cal.4th 1080, 1098.)

5. The purpose of discipline is not to punish, but to protect the public by eliminating practitioners who are dishonest, immoral, disreputable or incompetent. (*Fahmy v. Medical Board of California* (1995) 38 Cal.App.4th 810, 817.)

6. Government Code section 11522, Business and Professions Code section 2307 and California Code of Regulations, title 16, section 13597 govern these proceedings and establish the timelines and format for filing a petition.

7. California Code of Regulations, title 16, section 1360.2, provides:

When considering a petition for reinstatement of a license . . . pursuant to the provisions of Section 11522 of the Government Code, the division or panel shall evaluate evidence of rehabilitation submitted by the Petitioner considering the following criteria:

(a) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.

(b) Evidence of any act(s) or crime(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial which also could be considered as grounds for denial under Section 480.

(c) The time that has elapsed since commission of the act(s) or crime(s) referred to in subsections (a) or (b).

(d) In the case of a suspension or revocation based upon the conviction of a crime, the criteria set forth in California Code of Regulations, title 16, section 1360.1, subsections (b), (d) and (e).

(e) Evidence, if any, of rehabilitation submitted by the applicant.

8. Pursuant to subdivision (d), the Board must also consider the following factors, several of which are duplicative. Section 1360.1, subdivisions (b), (d) and (e) provide:

(b) The total criminal record. [¶] . . . [¶]

(d) Whether the licensee, certificate or permit holder has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against such person.

(e) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code.

9. In applying all of the foregoing criteria to the facts of this case, it appears that Petitioner has established that his license to practice medicine should be restored, albeit on a probationary basis. His crimes occurred more than seven years ago; he has had no subsequent criminal conviction. While Petitioner has not made full restitution, he lacks the financial means to do so. He has, however, used his time and talent to do extensive volunteer work in the community, and he has completed substantial continuing medical education to keep abreast with developments in medicine over the past several years. He has a stable family life, and he also has a life plan in the event his license to practice medicine is restored. In short, the public health, safety and welfare will not be adversely affected in Petitioner's license is restored on the probationary terms set forth in the below Order.

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

The Petition of Byron Flores Solorzano for reinstatement of his revoked Physician's and Surgeon's Certificate number A 51273 is granted subject to the following:

The newly reinstated certificate is hereby revoked. However, the revocation is stayed and Petitioner is placed on probation for five years upon the following terms and conditions:

1. Clinical Training Program-Condition Precedent: Within 60 calendar days of the effective date of this Decision, Petitioner shall enroll in a clinical training or educational

program equivalent to the Physician Assessment and Clinical Education Program (PACE) offered at the University of California - San Diego School of Medicine (Program).

The Program shall consist of a Comprehensive Assessment program comprised of a two-day assessment of Petitioner's physical and mental health; basic clinical and communication skills common to all clinicians; and medical knowledge, skill and judgment pertaining to Petitioner's specialty or sub-specialty, and at minimum, a 40-hour program of clinical education in the area of practice deemed appropriate taking into account data obtained from the assessment, Decisions, Accusation, and any other information that the Division or its designee deems relevant. Petitioner shall pay all expenses associated with the clinical training program.

Based on Petitioner's performance and test results in the assessment and clinical education, the Program will advise the Board or its designee of its recommendation(s) for the scope and length of any additional educational or clinical training, treatment for any medical condition, treatment for any psychological condition, or anything else affecting Petitioner's practice of medicine. Petitioner shall comply with Program recommendations.

At the completion of any additional educational or clinical training, Petitioner shall submit to and pass an examination. The Program's determination whether or not Petitioner passed the examination or successfully completed the Program shall be binding.

Petitioner shall complete the Program not later than six months after Petitioner's initial enrollment unless the Board or its designee agrees in writing to a later time for completion.

Failure to participate in and complete successfully all phases of the clinical training program outlined above is a violation of probation.

Petitioner shall not practice medicine until he has successfully completed the Program and has been so notified by the Board or its designee in writing, except that Petitioner may practice in a clinical training program approved by the Division or its designee. Petitioner's practice of medicine shall be restricted only to that which is required by the approved training program.

2. Ethics Course: Within 90 calendar days of the effective date of this Decision, Petitioner shall enroll in a course in ethics, at his own expense, approved in advance by the Board or its designee. Failure to successfully complete the course during the first year of probation is a violation of probation. Petitioner shall submit a certification of successful completion to the Board or its designee not later than 15 calendar days after successfully completing the course, or not later than 15 calendar days after the effective date of the Decision, whichever is later.

An ethics course taken after the acts that gave rise to the charges in the Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board or its designee, be accepted towards the fulfillment of this condition if the course would have been

approved by the Board or its designee had the course been taken after the effective date of this Decision.

The Board recognizes that on June 24, 2012, Petitioner finished the two-day portion of the Medical Ethics and Professionalism Course given by the Board-authorized group Professional Boundaries, Inc. Petitioner must participate in the six and 12-month follow-ups to satisfy the terms of this Condition.

3. Monitoring of Practice. Within 30 calendar days of completing the program required by Condition number 1, Petitioner shall submit to the Board or its designee for prior approval as a practice monitor, the name and qualifications of one or more licensed physicians and surgeons whose licenses are valid and in good standing, and who are preferably American Board of Medical Specialties (ABMS) certified. A monitor shall have no prior or current business relationship with Petitioner, or any other relationship that could reasonably be expected to compromise the ability of the monitor to render fair and unbiased reports to the Board, including but not limited to any form of bartering, shall be in Petitioner's field of practice, and must agree to serve as Petitioner's monitor. Petitioner shall pay all monitoring costs.

The Board or its designee shall provide the approved monitor with copies of the Decision and Accusation, and a proposed monitoring plan. Within 15 calendar days of receipt of the Decision, Accusation, and proposed monitoring plan, the monitor shall submit a signed statement that the monitor has read the Decision and Accusation, fully understands the role of a monitor, and agrees or disagrees with the proposed monitoring plan. If the monitor disagrees with the proposed monitoring plan, the monitor shall submit a revised monitoring plan with the signed statement.

Within 60 calendar days of the completion of the program set forth in Condition number 1 of this Order, and continuing through the first year of probation, Petitioner's practice shall be monitored by the approved monitor. Petitioner shall make all records available for immediate inspection and copying on the premises by the monitor at all times during business hours and shall retain the records for the entire term of probation.

The monitor shall submit quarterly written reports to the Board or its designee which includes an evaluation of Petitioner's performance, indicating whether Petitioner's practices are within the standards of practice of medicine or billing, or both, and whether Petitioner is practicing medicine safely, billing appropriately or both. It shall be the sole responsibility of Petitioner to ensure that the monitor submits the quarterly written reports to the Board or its designee within 10 calendar days after the end of the preceding quarter.

If the monitor resigns or is no longer available, Petitioner shall, within five calendar days of such resignation or unavailability, submit to the Board or its designee, for prior approval, the name and qualifications of a replacement monitor who will be assuming that responsibility within 15 calendar days. If Petitioner fails to obtain approval of a replacement monitor within 60 days of the resignation or unavailability of the monitor, Petitioner shall be suspended from

the practice of medicine until a replacement monitor is approved and prepared to assume immediate monitoring responsibility. Petitioner shall cease the practice of medicine within 3 calendar days after being so notified by the Board or designee.

In lieu of a monitor, Petitioner may participate in a professional enhancement program equivalent to the one offered by PACE that includes, at minimum, quarterly chart review, semi-annual practice assessment, and semi-annual review of professional growth and education. Petitioner shall participate in the professional enhancement program at Petitioner's expense during the term of probation.

Failure to maintain all records, or to make all appropriate records available for immediate inspection and copying on the premises, or to comply with this condition as outlined above is a violation of probation.

4. Notification. Prior to engaging in the practice of medicine Petitioner shall provide a true copy of this Decision and Order to the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to Petitioner, at any other facility where Petitioner engages in the practice of medicine, including all physician and locum tenens registries or other similar agencies, and to the Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage to Petitioner. Petitioner shall submit proof of compliance to the Board or its designee within 15 calendar days. This condition shall apply to any change in hospitals, other facilities or insurance carrier.

5. Supervision of Physician Assistants. During probation, Petitioner is prohibited from supervising physician assistants.

6. Obey All Laws. Petitioner shall obey all federal, state and local laws, all rules governing the practice of medicine in California and remain in full compliance with any court-ordered criminal probation, payments, and other orders.

7. Quarterly Declarations. Petitioner shall submit quarterly declarations under penalty of perjury on forms provided by the Board, stating whether there has been compliance with all the conditions of probation. Petitioner shall submit quarterly declarations not later than 10 calendar days after the end of the preceding quarter.

8. Probation Unit Compliance. Petitioner shall comply with the Board's probation unit. Petitioner shall, at all times, keep the Board informed of Petitioner's business and residence addresses. Changes of such addresses shall be immediately communicated in writing to the Board or its designee. Under no circumstances shall a post office box serve as an address of record, except as allowed by Business and Professions Code section 2021, subdivision (b). Petitioner shall not engage in the practice of medicine in Petitioner's place of residence. Petitioner shall maintain a current and renewed California physician's and surgeon's license.

Petitioner shall immediately inform the Division or its designee, in writing, of travel to any areas outside the jurisdiction of California which lasts, or is contemplated to last, more than

30 calendar days.

9. Interview with the Board or Its Designee. Petitioner shall be available in person for interviews either at Petitioner's place of business or at the probation unit office, with the Board or its designee upon request at various intervals and either with or without prior notice throughout the term of probation.

10. Residing or Practicing Out-of-State. In the event Petitioner should leave the State of California to reside or to practice, Petitioner shall notify the Board or its designee in writing 30 calendar days prior to the dates of departure and return. Non-practice is defined as any period of time exceeding 30 calendar days in which Petitioner is not engaging in any activities defined in sections 2051 and 2052 of the Business and Professions Code.

All time spent in an intensive training program outside the State of California which has been approved by the Board or its designee shall be considered as time spent in the practice of medicine within the State. A Board-ordered suspension of practice shall not be considered as a period of non-practice. Periods of temporary or permanent residence or practice outside California will not apply to the reduction of the probationary term. Periods of temporary or permanent residence or practice outside California will relieve Petitioner of the responsibility to comply with the probationary terms and conditions with the exception of this condition and conditions of probation numbers 6, 8, and 14.

Petitioner's license shall be automatically cancelled if Petitioner's periods of temporary or permanent residence or practice outside California totals two years. However, Petitioner's license shall not be cancelled as long as Petitioner is residing and practicing medicine in an other state of the United States and is on active probation with the medical licensing authority of that state, in which case the two-year period shall begin on the date probation is completed or terminated in that state.

11. Failure to Practice Medicine - California Resident. In the event Petitioner resides in the State of California and for any reason Petitioner stops practicing medicine in California, Petitioner shall notify the Board or its designee in writing within 30 calendar days prior to the dates of non-practice and return to practice. Any period of non-practice within California, as defined in this condition, will not apply to the reduction of the probationary term and does not relieve Petitioner of the responsibility to comply with the terms and conditions of probation. Non-practice is defined as any period of time exceeding 30 calendar days in which Petitioner is not engaging in any activities defined in sections 2051 and 2052 of the Business and Professions Code. Petitioner's license shall be automatically cancelled if Petitioner resides in California and for a total of two years, fails to engage in California in any of the activities described in Business and Professions Code sections 2051 and 2052.

All time spent in an intensive training program which has been approved by the Board or its designee shall be considered time spent in the practice of medicine. For purposes of this condition, non-practice due to a Board-ordered suspension or in compliance with any other condition of probation, shall not be considered a period of non-practice.

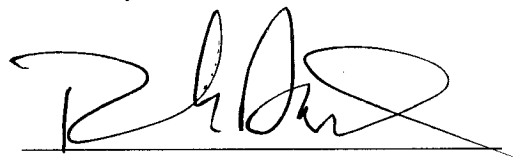
12. License Surrender. Following the effective date of this Decision, if Petitioner ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the terms and conditions of probation, Petitioner may request the voluntary surrender of his license. The Board reserves the right to evaluate Petitioner's request and to exercise its discretion whether or not to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, Petitioner shall within 15 calendar days deliver Petitioner's wallet and wall certificate to the Board or its designee and Petitioner shall no longer practice medicine. Petitioner will no longer be subject to the terms and conditions of probation and the surrender of Petitioner's license shall be deemed disciplinary action. If Petitioner reapplies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

13. Probation Monitoring Costs. Petitioner shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Board, which may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of California and delivered to the Board or its designee no later than January 31 of each calendar year. Failure to pay costs within 30 calendar days of the due date is a violation of probation.

14. Violation of Probation. Failure to fully comply with any term or condition of probation is a violation of probation. If Petitioner violates probation in any respect, the Board, after giving Petitioner notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an Accusation or Petition to Revoke Probation, or an Interim Suspension Order is filed against Petitioner during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

15. Completion of Probation. Petitioner shall comply with all financial obligations not later than 120 calendar days prior to the completion of probation. Upon successful completion of probation, Petitioner's certificate shall be fully restored.

Date: 7-17-15



RALPH B. DASH
Administrative Law Judge
Office of Administrative Hearings